PROVINCE OF LOWER-CANADA.

In Appeal.

FARQUHAR McRAE,
(Defendant in the Court below)
APPELLANT;

AND

ROBERT MASON,
(Plaintiff in the Court below)
RESPONDENT.

Respondent's Case.

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filed 14 Nov. 1820
LM

Tolls and franchise

A. STUART, for Respondent.

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(Defendant in the Court below,)
APPELLANT;

AND

ROBERT MASON,
(Plaintiff in the Court below,)
RESPONDENT.

RESPONDENT'S CASE.

ON the 10th of January, 1820, at Montreal, Farquhar McRae, the above named Appellant, and one Robert Kerr, they being then Carpenters and Joiners, and Copartners, working and trading together, at Montreal, under the name or firm of Kerr & McRae, made there a certain Note, whereby, three months after date, they jointly and severally promised to pay the Respondent the sum of £50, for value received, and severally signed the same.

On the 22d of February, 1820, Robert Kerr absconded.

On the 23d the Respondent made affidavit that these, his debtors, were about to leave the Province, and that, without the benefit of a Capias ad Respondendum, he might be deprived of his remedy against them. The *Capias* accordingly issued. The Sheriff returned service of the process on McRae, and *non est inventus* as to Kerr.

The Respondent's declaration contains an averment similar to the affirmation contained in his affidavit.

Upon the trial of the cause, the Copartnership which had subsisted between Kerr & McRae, was proved by several witnesses. The absconding of Kerr, one of the partners, was also proved by several witnesses. The intention of McRae to follow the example of his partner is also proved by testimony in the cause. And the Court below, coupling these facts with the positive affirmation of the Respondent, did not hesitate in pronouncing judgment against the Appellant for the sum demanded.

The only question, offering any difficulty, was the term of payment, which had not expired at the period of the institution of the suit. But it was found, on reference to authorities, (and amongst others Ferr. Gr. Cout.) that the debtor, meditating flight, was deprived of the benefit of any term of which the creditor might have granted him.

It is from this judgment that the present appeal is brought.

Quebec, 14th Nov. 1820.